

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE GENESIS SOLAR ENERGY
PROJECT

DOCKET NO. 09-AFC-8

**COMMENTS ON PMPD FROM
INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY**

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INTRODUCTION

The Center for Biological Diversity provides these comments to help assist the Presiding Member and the Committee in revising the PMPD, assuming for the sake of argument alone that the proposed project may be permitted. However, as the Center has previously explained, the Center does not believe that the inadequacies in the environmental review and the poor choice of a project site can be remedied through Conditions of Certification. Nonetheless, the Center has participated in several workshops regarding specific conditions of certification and discussed conditions at hearing, in briefing and during the September 8, 2010 conference that could improve the proposed project.

As an initial matter, the Center strongly urges the Presiding Member to **consecutively number all pages of the document or use numbering for the chapters in addition to the pages**. It is very difficult to locate pages without a clear numbering system.

1. Limited Road Access

A. Cross-Reference to Cul-14.

Add the following language on Biology Page 18 at the end of the second full paragraph, Biology Page 19 at the end of the third paragraph and Biology 39 at the end of the first partial paragraph:

In addition, Condition of Certification CUL-14, which requires construction of a security gate and/or a guard at the south end of the access road to prevent unauthorized access, will help ensure that use of the road is limited to authorized traffic associated with the project and limit the potentially significant impacts to the species and its habitat, from unauthorized use of the road and surrounding areas by off-road vehicles driving, parking or camping in areas that are not designated for these uses.

B. New Condition as part of Bio-8:

As the Center proposed in our Reply Brief, it may be preferable to have this condition expressly included as part of Bio-8 in the PMPD.

Bio- 8: Limited Road Access (New Condition)

With the approval of the BLM, the facility owner will construct a security gate and provide a guard 24 hours per day at the south end of the access road to prevent unauthorized access. Use of the access road will be restricted to activities associated with construction and operation of the proposed project, and the gate shall be kept locked after hours of operation, for the protection of wildlife, cultural sites, the public, and facilities within the ROW. Workers will be prohibited from bringing personal off-road vehicles (i.e., green sticker vehicles) to the site or onto the access road and workers will be prohibited from leaving the paved access road or the facility area in work vehicles or any personal vehicles brought to the site.

The facility owner will provide an educational unit to both construction workers and operations workers at the facility regarding legal limitations on off-road vehicle use, damage to habitats and species that may occur from route proliferation and from any off-road vehicle use off of designated routes and roads.

C. Correction Biology Page 37-38:

The Center believes that the PMPD confuses the deterrent effect of law enforcement with simply having an “increased presence of people.” The Center is unaware of any data or evidence in this record, or elsewhere, that shows that having more people in an area deters illegal off-road use. In fact, the opposite inference is likely far more reasonable—that bringing more people into the area as construction workers and for operations will increase off-road vehicles use of this area both lawful and unlawful use.

In light of the record, we acknowledge that the risk of increased unauthorized offroad vehicle use from the new GSEP access road may be possible, but is highly speculative. Illegal off-road vehicle use will most likely occur where the “offroaders” can engage in the activity without detection *by law enforcement*. Today, the proposed GSEP site is a remote expanse of desert more than 25 miles from the nearest town and nine miles away from the state prison that is the closest human settlement in the area. The sheer size and remoteness of the area may account for the reason the BLM has had “significant problems keeping off-road vehicles on designated routes.” (7/12/10 RT 313:21 – 315:4). However, the record establishes that there will be an average of 650 workers on-site during the construction phase and 40 to 50 workers on-site during operation, 24 hours per day, seven days per week. (Ex. 400, pp. B.1-1 to B.1-2; B.1-23.) These workers will have completed the Workers Environmental Awareness Program as required by Condition of Certification **BIO-6** and will be sensitized to the fragile vulnerability of the desert environment. The project owner is highly motivated to protect biological resources in the vicinity of the project. ~~Thus, the evidence supports a more reasonable inference that unauthorized off-road vehicle use in the vicinity of the GSEP will decrease because the increased presence of people will deter illegal off-road use due to the higher probability of detection.~~ We find Conditions of Certification **BIO-6** and **BIO-8** *if taken together with Cul-14 requiring a gate and/or a guard at the south end of the access road could* mitigate the impacts from the new paved road below significance.

2. Correction: Biology Page 35

~~Ironically,~~ CBD’s opening brief quotes their witness’ testimony that “fire in desert ecosystems is well documented to cause catastrophic landscape scale changes

and impacts to the local species.” (CBD Op. Brief, p. 10, citing Ex. 830 at 7.) CBD claims “the RSA fails to adequately identify or analyze the risk of fire or the potential impacts to the surrounding lands if a fire escaped from the site and accordingly also fails to address the mitigation of this impact.” (*Id.*)

The Center fails to see any irony in the lack of attention by the Staff to impacts to desert ecosystems from fire. While it is true that the Center introduced evidence on this issue, the RSA did not adequately address this issue. It is the Commission, not Intervenor who are charged with identifying and analyzing the impacts of the project under CEQA. Nothing in the subsequent paragraphs shows that the issues have been addressed.

3. Bio-__: Monitoring and Reporting Requirements for Both Construction and Operations: Addition

The facility owner will be required to provide access to the site for monitoring on site and in the surrounding area for impacts to biological and cultural resources during construction and operations as part of a long-term coordinated effort to acquire information about the impacts of large-scale solar projects on the resources of the California Desert for planning and other purposes.

4. Bio-16/Bio-21: Avian Protection Plan: Addition

*In addition, biological monitoring at the site will include monitoring and reporting of impacts to all bird species, including frequent monitoring for migratory birds during migration seasons and monitoring of the evaporation ponds. Any dead or injured birds will be reported immediately to the California Department of Fish and Game and all carcasses of dead birds will be preserved for evaluation. Reports on all monitoring efforts will be provided to the Commission and the California Department of Fish and Game **on a quarterly basis at minimum**. If impacts to any birds are found to be greater than were anticipated in the Staff Assessment, the Commission reserves the right to impose additional mitigation requirements and conditions at any time.*

5. Bio-12: Change: Compensatory mitigation shall be **2:1** for desert tortoise habitat outside critical habitat and **5:1** for desert tortoise habitat within critical habitat.

6. Bio-13: Addition:

Raven Control: The facility owner will not construct lattice poles for any power line (or gen-tie), only mono-poles will be used to limit raven perching and nesting in the area.

AND CHANGE:

VIS-3 To reduce the prominence of the proposed new segment of

transmission line paralleling Highway I-10, the applicant shall set back the transmission line at least 1/2 mile from Highway I-10 if possible. ~~In addition, to reduce contrast and prominence of the transmission line, lattice-style transmission towers shall be utilized, and painted in nonreflective natural tones to blend with the visual background.~~ Realignment of the transmission line shall be consistent with any cultural or biological constraints identified in those portions of this Staff Assessment/DEIS. In the event of conflict, cultural or biological constraints shall prevail.

- 7. Bio- 20:** Addition: In addition, the Commission will require full mitigation for the **151 acres** of sand shadow area as part of the mitigation for impacts to Mojave fringe-toed lizard habitat at a ratio of at least **2:1**.

The Center was pleased to see mitigation for the 151 acres of indirect effects included in the PMPD although it was at an unreasonably low 0.5:1 ratio. We do not agree with Staff or the Applicant that this mitigation should be deleted.

Biology page 27-28: CBD did not misunderstand that BIO-24 is for temporarily disturbed areas. Our point is and remains that no revegetation or restoration plans for the site either for temporary disturbance or end of the life of the project were/are provided. Therefore it is unclear if these plans will adequately address revegetation, provide adequate success criteria including time frames and remedial actions to assure success.

Biology page 117-118 Bio-24: Revegetation and Restoration for Both Temporary and Long-term Disturbances:

Revegetation of temporarily disturbed areas and post-BIO-24 The Project owner shall prepare and implement a Revegetation Plan to restore all areas subject to temporary disturbance.

Addition: The facility owner will in addition prepare a restoration and revegetation plan for restoration of the entire site and the access road at the end of the project term. The facility owner shall also prepare a plan for revegetation and restoration of natural areas after fire.

- 8. Golden Eagles:** Biology Page 122 **Change to Bio-28:** Monitoring should be expanded beyond monitoring of nests to include monitoring of forage areas

4. Monitoring and Adaptive Management Plan: If an occupied nest is detected within one **ten** miles of the Project boundaries, the Project owner shall prepare and implement a Golden Eagle Monitoring and Management Plan for the duration of construction to ensure that Project construction activities do not result in injury or disturbance to golden eagles.

9. Emergency Access Planning

Bio- __/Worker Safety: (New Condition) Emergency Access Plan for All-Terrain Fire Engines:

The facility owner, working in conjunction with the Riverside County Fire Department, will develop a plan for emergency access to the facility under various emergency scenarios that will minimize impacts to species and habitats from cross-country use of the All-Terrain Fire Engines before operations begin. Scenarios should include circumstances where the main access road is blocked due to traffic or accidents on Interstate 10. At minimum, impacts to soils, desert tortoise, Mojave fringe-toed lizard, and rare plants must be evaluated and restoration and revegetation plans must be developed for implementation if any emergency off-road access does occur that damages these resources.

While it is true that the Commission cannot *control* participation by the Riverside County Fire Department, the Commission can and should address impacts and mitigation measures even where those changes or alterations are within the responsibility and jurisdiction of another public agency. In this case, the Fire Department has already stated its intent to prepare such a plan and the proposed condition simply requires the Applicant to also develop a plan in conjunction with the Fire Department before operations begin.

10. Modifying Conditions to Allow for Project Phasing

The Applicant continues to request that it be allowed to commence limited construction without completed plans. The Center agrees with Staff that the Applicant's earlier proposal should be rejected. The proposal was too general and vague and could undermine adequate review and approvals of plans for construction or limited construction. However, assuming for the sake of argument alone that the proposed project is approved, the Center believes that there may be a basis for compromise *if the Applicant identifies a specific area for initial, limited construction activities and a provides completed plans that would support construction in that limited area.* Unfortunately, Applicant appears to be reluctant to provide that information at this time so that it could be evaluated by the Commission and all of the parties before the PMPD comment deadline.

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Respectfully submitted,



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